

**FILED**

**SEP 04 2008**

PATRICK E. DUFFY, CLERK

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

STEPHEN P. KELLY,	)	CV 08-94-M-DWM-JCL
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
BERNICE HUNT,	)	
	)	
Defendant.	)	
_____	)	

Plaintiff Kelly has filed a Complaint against Defendant Hunt seeking the return of Kelly's cat, which he alleges is in Hunt's possession. Kelly, who is proceeding pro se and in forma pauperis, has also filed a motion for temporary restraining order and/or preliminary injunction seeking the return of his cat.

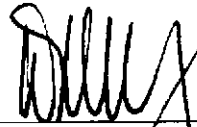
United States Magistrate Judge Jeremiah C. Lynch conducted preliminary screening of the Complaint as required by 28 U.S.C. § 1915(e)(2). Under that statute, the court engages in a preliminary screening to assess the merits of the claims and identify cognizable claims, or dismiss the complaint or any portion thereof if the complaint is frivolous, malicious, or fails to state a claim upon which relief can be granted.

Judge Lynch issued Findings and Recommendations in which he recommends dismissal of the Complaint for lack of jurisdiction. Judge Lynch explains that Defendant Hunt is a private citizen and not a state actor, foreclosing jurisdiction under 42 U.S.C. § 1983. The Court does not have diversity jurisdiction, Judge Lynch concludes, because the parties are both residents of the State of Montana and the amount in controversy does not exceed \$75,000.00. The Magistrate finds that these jurisdictional defects cannot be cured with the filing of an amended complaint.

Plaintiff Kelly did not timely object and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000). I can find no clear error with Judge Lynch's Findings and Recommendations and therefore adopt them in full.

Accordingly, IT IS HEREBY ORDERED that the Complaint is DISMISSED for lack of jurisdiction, and the motion for temporary restraining order and/or preliminary injunction (Doc. No. 4) is DENIED as moot.

DATED this 4<sup>th</sup> day of September, 2008.

  
\_\_\_\_\_  
Donald W. Molloy, District Judge  
United States District Court